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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 JOHN S. MILLER,

11 Plaintiff,

12 v.

13 JO ANNE B. BARNHART, Commissioner of
14 Social Security,

15 Defendant.

Case No. C06-5445 FDB

ORDER AWARDING 42 U.S.C. §
406(b) ATTORNEY FEES

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17 This matter comes before the Court on Plaintiff's motion for authorization of attorney fees
18 under 42 U.S.C. § 406(b). Counsel for Plaintiff seeks a fee award of \$23,290.00. The
19 Commissioner has filed a response to Plaintiff's motion without objection to the fee request.

20 Attorney's fees may be awarded to a successful social security claimant's lawyer for his or her
21 representation before a court pursuant 42 U.S.C. §§ 406(b); Straw v. Bowen, 866 F.2d 1167 (9th
22 Cir. 1989). Plaintiff must apply to the Social Security Administration for an award of fees for
23 representation at the administrative level. 42 U.S.C. § 406(a); Stenswick v. Bowen, 815 F.2d 519
24 (9th Cir. 1987). Previously, this Court awarded Plaintiff's counsel \$3,133.89 pursuant to the Equal
25 Access to Justice Act (EAJA). Plaintiff's counsel now petitions for a gross fee of \$23,290.00.

1 Under 42 U.S.C. § 406(b)(1)(A) the court can only award fees up to the 25 percent withheld
2 from the past-due benefits. This 25% limit applies to the total of EAJA and 406(b) fees combined.
3 See, Morris v. Social Sec. Admin., 689 F.2d 495, 497-98 (4th Cir. 1982); Webb v. Richardson, 472
4 F.2d 529, 536 (6th Cir. 1972); Dawson v. Finch, 425 F.2d 1192, 1195 (5th Cir. 1970).

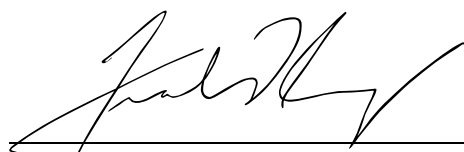
5 Plaintiff was awarded \$114,360.00 in past due benefits. The federal court retainer agreement
6 provided for a fee of 25% of past due benefits; which equals \$23,290.00. The Court concludes that
7 the attorney's fees sought counsel are reasonable within the meaning of § 406(b)

8 ACCORDINGLY,

9 IT IS ORDERED:

10 Plaintiff's Motion for an Award of Attorney's Fees [Dkt #29] is **GRANTED**. Plaintiff's
11 counsel is awarded 42 U.S.C. § 406(b) attorney fees in the sum of \$23,290.00, minus any applicable
12 processing fees as allowed by statute. Upon receipt, Plaintiff's counsel shall immediately reimburse
13 Plaintiff the amount of \$3,133.89.00 previously received pursuant to EAJA.

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15 DATED this 12th day of August, 2008.

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19 FRANKLIN D. BURGESS
20 UNITED STATES DISTRICT JUDGE
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